

REMARKS

The Office Action mailed July 3, 2007, has been received and reviewed. Claims 10-30 are currently pending in the application. Claims 10-30 stand rejected. Applicant has amended claims 10, 17, 20 and 29, and respectfully requests reconsideration of the application as amended herein.

Claim Rejections under 35 U.S.C. § 103**Claims 10-30**

Claims 10-30 were rejected as being unpatentable over U.S. Patent No. 6,175,550 to van Nee (“van Nee”) in view of “Overview of Multicarrier CDMA,” IEEE Comm. Mag., Dec. 1997, at 126 to Hara et al. (“Hara”) and further in view of Applicant’s Admitted Prior Art (“AAPA”) and further in view of U.S. Patent No. 6,810,030 to Kuo (“Kuo”) and further in view of U.S. Patent No. 6,804,214 to Lundh et al (“Lundh”). Applicant respectfully traverses this rejection, as hereinafter set forth.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) **must teach or suggest all the claim limitations**. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be “a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicant’s disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 10-30 are improper because the elements for a prima facie case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art reference must teach or suggest all the claims limitations.

Applicant has amended independent claims 10, 17, 20 and 29, from which claims 11-16, 18, 19, 21-28 and 30 depend, to each recite, in part, “*a plurality of forward link frequency bins are allocated to carry different types of payload data*” which is not taught or suggested in either van Nee, Hara, AAPA, Kuo or Lundh.

The Office Action concedes:

Van Nee in view of Hara in further view of Applicant’s admitted prior art in further view of Kuo does not expressly disclose allocating the plurality of forward link frequency bins to carry different types of data. Lundh teaches, in a CDMA system using multiple carriers (col. 2, lines 61-63), allocating the plurality of forward link frequency bins to carry different types of data (col. 5, line 20-42, where the secondary carrier only carries power controlled data, such that data is ***allocated according to whether it is power controlled or non-power controlled***). (Office Action, p. 6; emphasis added.)

Applicant respectfully disagrees. Applicant’s invention as presently claimed recites, in part, “*a plurality of forward link frequency bins are allocated to carry different types of payload data*”, while Lundh teaches segregating channels based on ***a characteristic of the channel***, namely whether the channel is power or non-power controlled, and **not** based on the **type of payload data** as claimed by Applicant.

Specifically, Lundh teaches, “dividing the power controlled 310 and non-power controlled common channels 320 into two separate carriers 260 and 250, respectively”. (Lundh, col. 5, lines 38-40). Therefore, since at least Applicant’s claim element of “*a plurality of forward link frequency bins are allocated to carry different types of payload data*” is not taught or suggested in the cited references, either individually or in any proper combination, these cited references cannot render obvious under 35 U.S.C. §103 Applicant’s invention as presently claimed.

Accordingly, since neither van Nee, Hara, AAPA, Kuo nor Lundh, either individually or in any proper combination, teach or suggest **all** of the claim limitations of Applicant’s invention as recited in amended independent claims 10, 17, 20 and 29, from which claims 11-16, 18, 19, 21-28 and 30 depend, van Nee, Hara, AAPA, Kuo or Lundh cannot render obvious under 35

U.S.C. § 103 Applicant's invention as claimed. Therefore, Applicant respectfully requests that such rejections be withdrawn.

Regarding dependent claims 11-16, 18, 19, 21-28 and 30, the nonobviousness of an independent claim precludes a rejection of claims which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 10, 17, 20 and claims 11-16, 18, 19, 21-28 and 30 which depend therefrom.

CONCLUSION

Claims 10-30 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicant's undersigned attorney.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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